

On Tuesday, July 22nd, the following seven-point document was distributed to all in attendance at a hearing requested by Premera that was held at the Office of the Insurance Commissioner in front of Commissioner Kreidler, OIC Staff, and via telephone the Interveners.

The Commissioner took the request under advisement. He allowed the Interveners and the OIC Staff until the close of business on July 23rd to respond. He will then issue an order by the close of business on July 24th. Included will be a specific extension of time for Premera to respond/appeal.

1. The Commissioner ORDERS Premera, subject to the terms and under the conditions set forth below, to produce to Special Master George Finkle, no later than July 28, 2003, those documents listed on Premera's privilege logs that the OIC Staff identified on June 30, 2003 as being sought by the States' Consultants. Such documents are referred to herein as "Disputed Privileged Documents."

2. This Order is entered as part of an adjudicative proceeding in which Judge Finkle is functioning in a quasi-judicial capacity. Judge Finkle's performance of the tasks set forth herein is in furtherance of the Commissioner's obligation as presiding officer to "exclude evidence . . . on the basis of evidentiary privilege recognized in the courts of this state." RCW 34.05.452(1).

3. Judge Finkle will review the Disputed Privileged Documents *in camera* for the sole purpose of determining the propriety of Premera's designations of privilege and work product protection. Following *in camera* review, Judge Finkle will issue a decision as to which, if any, Disputed Privileged Documents are neither privileged nor protected under the work product doctrine. Such documents will be identified by Bates number or range.

4. Premera shall have three business days following receipt of Judge Finkle's decision (a) to deliver to the OIC Staff those Disputed Privileged Documents identified by Judge Finkle as unprivileged and unprotected, and/or (b) to identify any individual Disputed Privileged Documents as to which Premera disputes Judge Finkle's *in camera* determination. The OIC Staff may subpoena any documents in the latter category. If Premera challenges the subpoena, Judge Finkle will determine whether the nature and number of withheld documents justify postponing the preparation of the consultants' draft reports.

5. It is understood by all parties to this proceeding that Premera maintains its claims of privilege or work product protection as to the documents to be reviewed by Judge Finkle. The production or disclosure of Disputed Privileged Documents by Premera to Judge Finkle pursuant to this Order is a compelled disclosure and shall not be deemed a waiver of any privilege or work product protection to which Premera would have been entitled, had the Disputed Privileged Documents not been disclosed to Judge Finkle. Neither the OIC Staff nor any intervenor nor any other third party may seek access to Disputed Privileged Documents based upon Premera's having disclosed them to Judge Finkle.

6. Judge Finkle will use the Disputed Privileged Documents, the information that they contain, and any other *in camera* submissions by Premera solely for the purpose of resolving disputes about the propriety of Premera's privilege and work product claims. All materials and information submitted *in camera* to Judge Finkle will be maintained in confidence and will not be disclosed to any other person. At the conclusion of Judge Finkle's *in camera* review, the Disputed Privileged Documents and all *in camera* submissions related thereto will be returned to Premera. To the extent that Judge Finkle makes any notes in the course of reviewing Disputed Privileged Documents, such notes will be kept confidential and will be either destroyed or sent to Premera at the conclusion of this proceeding.

7. Judge Finkle shall not be examined or questioned as to the substance of any information that he reviews *in camera*. No party or counsel of may call Judge Finkle as a witness in any proceeding related in any way to the subject matter of the documents that he reviews under the terms of this Order.

Premera's  
proposed  
order